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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,531	06/25/2003	Helmut Jerg	2000P13026WOUS	4119
46726	7590	03/25/2005	EXAMINER	
JOHN T. WINBURN 100 BOSCH BOULEVARD NEW BERN, NC 28562			KIM, YOON YOUNG	
			ART UNIT	PAPER NUMBER

1723

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/603,531	JERG, HELMUT	
	<b>Examiner</b>	<b>Art Unit</b>	
	Yoon-Young Kim	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 8-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 8-19 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10-25 of copending Application No. 10/603,758. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both disclose a filter having a filter body with a plurality of filter openings, each having a passage cross-section, which varies automatically in response to a characteristic inherent to a medium flowing through the openings to filter the medium.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1723

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 8 and 13 rejected under 35 U.S.C. 102(b) as being anticipated by Bartelt et al., U.S. Patent No. 5,554,284.

Regarding Claim 8, Bartelt discloses a filter comprising: a filter body (Fig. 3, #17) having a plurality of filter openings (Fig. 1 and 3, #110) for filtering a medium flowing through the openings; and each of the openings having a passage cross-section which varies automatically in response to a characteristic inherent to the medium flowing through the openings (Col. 4, Lines 8-12).

Regarding Claim 13, Bartelt discloses the filter including filter openings being screened or covered by flap-like elements (#110), the flap-like elements having a first substantially covering position (Fig. 5a) by a force effect of the medium flowing through the openings and can be adjusted to a second increased passage opening (Fig. 5c) by an increased flow rate of the medium flowing through the openings (Col. 4, Lines 1-8).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9-12 rejected under 35 U.S.C. 103(a) as being unpatentable over Bartelt in view of Silverwater, U.S. Patent No. 4,783,271.

Regarding Claim 9, Bartelt discloses filter openings being screened or covered by elements (#110) cut out of a thin metal plate (Col. 4, Lines 61-64) but does not disclose a material of manufacture influenced by heat. Silverwater teaches a fluid filter assembly (Fig. 1, #5) including a material of manufacture being a bimetal or shape memory metal which moves between a first shape at one temperature and a second shape at another temperature (Col. 5, Lines 20-26).

It would have been obvious to one of ordinary skill in the art to construct the screening or covering elements of Bartelt with the bimetal or shape memory metal used by Silverman, causing their state relative to the openings to vary under the influence of heat, because it is material that is common in the filter art.

Regarding Claim 10, Bartelt discloses that the elements (Fig. 1, #110) are punched out of the filter body in the shape of tongues positioned in the filter openings (Col. 4, Lines 61-64).

Regarding Claim 11, Bartelt does not disclose the material of manufacture of the metal tongue shaped elements. Silverwater teaches a material of manufacture being a shape memory metal (Col. 8, Lines 8-10).

It would have been obvious to one of ordinary skill in the art to form the tongue shaped elements of Bartelt from the shape memory metal used by Silverman because it is material that is common in the filter art.

Regarding Claim 12, Bartelt does not disclose the material of manufacture of the metal tongue shaped elements. Silverwater teaches a material of manufacture being a bimetal (Col. 8, Lines 5-7).

It would have been obvious to one of ordinary skill in the art to form the tongue shaped elements of Bartelt from the bimetal used by Silverman because it is material that is common in the filter art.

Art Unit: 1723

7. Claims 14 and 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Inoue et al., U.S. Patent No. 5,904,163 in view of Bartelt.

Regarding Claim 14, Inoue discloses a dishwashing machine (Fig.1, #1), the machine including a water medium utilized in the machine (Col. 19, Lines 12-13), comprising: a filter (Fig. 7, #19) for filtering the water medium in the machine; and the filter including a filter body having a plurality of filter openings (Col. 6, Lines 2-4) for filtering the medium flowing through the openings. Inoue does not disclose that the cross-section of the openings vary in response to a characteristic inherent to the medium flowing through the openings. Bartelt teaches a filter (Fig. 3, #17) including openings (Fig. 1 and 3, #110) having a passage cross-section, which varies automatically in response to a characteristic inherent to the medium flowing through the openings (Col. 4, Lines 8-12).

It would have been obvious to one of ordinary skill in the art to modify Inoue by adding the flap-like element of Bartelt for efficient self-cleaning of the filter (Col. 2, Lines 46-52).

Regarding Claim 19, Inoue does not disclose that the filter openings are screened or covered by flap-like elements. Bartelt teaches filter openings being screened or covered by flap-like elements (#110), the flap-like elements having a first substantially covering position (Fig. 5a) by a force effect of the medium flowing through the openings and can be adjusted to a second increased passage opening (Fig. 5c) by an increased flow rate of the medium flowing through the openings (Col. 4, Lines 1-8).

It would have been obvious to one of ordinary skill in the art to modify Inoue by adding the flap-like elements of Bartelt for efficient self-cleaning of the filter (Col. 2, Lines 46-52).

8. Claims 15-18 rejected under 35 U.S.C. 103(a) as being unpatentable over Inoue in view of Bartelt as applied to claim 14 above, and further in view of Silverman.

Art Unit: 1723

Regarding Claim 15, Inoue in view of Bartelt discloses filter openings being screened or covered by elements (#110) cut out of a thin metal plate (Col. 4, Lines 61-64) but does not disclose a material of manufacture influenced by heat. Silverwater teaches a fluid filter assembly (Fig. 1, #5) including a material of manufacture being a bimetal or shape memory metal which moves between a first shape at one temperature and a second shape at another temperature (Col. 5, Lines 20-26).

It would have been obvious to one of ordinary skill in the art to construct the screening or covering elements of Bartelt with the bimetal or shape memory metal used by Silverman, causing their state relative to the openings to vary under the influence of heat, because it is material that is common in the filter art.

Regarding Claim 16, Inoue in view of Bartelt discloses that the elements (Fig. 1, #110) are punched out of the filter body in the shape of tongues positioned in the filter openings (Col. 4, Lines 61-64).

Regarding Claim 17, Inoue in view of Bartelt does not disclose the material of manufacture of the metal tongue shaped elements. Silverwater teaches a material of manufacture being a shape memory metal (Col. 8, Lines 8-10).

It would have been obvious to one of ordinary skill in the art to form the tongue shaped elements of Bartelt from the shape memory metal used by Silverman because it is material that is common in the filter art.

Regarding Claim 18, Inoue in view Bartelt does not disclose the material of manufacture of the metal tongue shaped elements. Silverwater teaches a material of manufacture being a bimetal (Col. 8, Lines 5-7).

It would have been obvious to one of ordinary skill in the art to form the tongue shaped elements of Bartelt from the bimetal used by Silverman because it is material that is common in the filter art.

### ***Response to Arguments***

9. Applicant's arguments filed 19 January 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Bartelt teaches that it would have been obvious to one of ordinary skill in the art to modify Inoue by adding the flap-like element of for efficient self-cleaning of the filter (Col. 2, Lines 46-52).

In response to applicant's argument that neither reference provides guidance as to how modifications could be effected, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).



**Conclusion**


10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yoon-Young Kim whose telephone number is (571) 272-2240. The examiner can normally be reached on 8:30-4:30, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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